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DEPARTMENT OF AUDITOR-CONTROLLER**

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March 30, 2009

TO: Supervisor Don Knabe, Chairman
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FROM: Wendy L. Watanabe *Wendy L. Watanabe*
Auditor-Controller

SUBJECT: **SECOND FOLLOW-UP REVIEW OF COUNTY COUNSEL LITIGATION
COST MANAGEMENT**

On March 27, 2007, the Board directed the Auditor-Controller to report on County Counsel's progress in implementing the recommendations from our January 29, 2007 report on Litigation Cost Management. The original report contained a total of 45 recommendations, including nine recommendations made by the outside attorney.

In our first follow-up report dated October 5, 2007, we reviewed the ten recommendations County Counsel indicated they had implemented or substantially implemented. During this second follow-up review, we reviewed forty recommendations that County Counsel indicated as implemented in their June 5, 2008 status report to the Board. We did not review four recommendations which County Counsel's status report indicated they had not yet implemented.

Results of Review

Overall, County Counsel has made significant progress in implementing the recommendations from our prior Litigation Cost Management reports. Of the 40 recommendations we reviewed, 30 are fully implemented, five are substantially implemented and five are partially implemented. County Counsel needs to complete their development of systems to monitor the status of cases and compliance with procedures, and emphasize the timely submission of formal status reports. The status of the forty recommendations is discussed below.

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In addition, we noted that County Counsel has implemented a new Litigation Severity Index and Management Protocol (LSI or new procedures). The LSI includes a system for rating cases based on potential monetary exposure, impact on public policy, etc., which, among other things, determines the frequency and timing of roundtables. The LSI also includes various procedures, such as bill review guidelines and procedures for updating case budgets.

Future Follow-Up Reviews

We did not follow up on the four recommendations that County Counsel indicated in their June 5, 2008 status report to the Board as not yet been implemented. These four recommendations relate to eliminating automatic updates to the Risk Management Information System (RMIS) budgets for in-house fees/costs; evaluating using RMIS to generate exception reports of in-house cases that have exceeded their budget; and considering the use of automatic bill review software.

County Counsel indicated that they are working with the Chief Executive Office (CEO) and the RMIS vendor to eliminate the automatic update feature for in-house fees and expect to implement the change by the end of April 2009. County Counsel believes that a report of in-house cases that have exceeded their budget will not be necessary once the automatic update feature has been eliminated. County Counsel also indicated that they are developing a Request for Proposals for electronic bill review software, and anticipate executing a contract by August 2009.

County Counsel has indicated that they are committed to continuing their efforts to fully implement the remaining recommendations. County Counsel will provide a status report to your Board on all recommendations not previously reported as implemented in September 2009. We will conduct a follow-up review on these recommendations after County Counsel issues their status report.

Status of Recommendations

Recommendation 1 from the January 29, 2007 Report

County Counsel management monitor to ensure initial CEPs are completed in a timely manner, include all required information, and are properly approved.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that initial Case Evaluation Plans (CEPs) were not always completed on time, did not always include all the required information and were not always properly approved. During the October 2007 follow-up review, we noted County Counsel had significantly improved the timeliness and completeness of

initial CEPs. However, they were not consistently tracking and following up on missing or late CEPs.

During this follow-up review, we noted two of ten CEPs we reviewed were submitted an average of 46 days late. County Counsel's records indicate they followed up on the two CEPs by sending monthly email reminders to each County Counsel division listing CEPs due or past due. We also noted that all ten of the cases we reviewed were listed on County Counsel's monitoring spreadsheet, and the spreadsheet contained accurate dates the CEPs were submitted. Therefore, it appears County Counsel is adequately monitoring CEP timeliness. We also noted that the ten CEPs were properly approved and generally included the required information.

Recommendation 2 from the January 29, 2007 Report

County Counsel management evaluate the feasibility of using RMIS to provide management reports to ensure initial CEPs are completed in a timely manner.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that initial CEPs were not being submitted on time, and recommended that County Counsel evaluate the feasibility of using RMIS to ensure initial CEPs are completed on time. During the October 2007 follow-up review, we noted that County Counsel was developing a system to use RMIS to identify cases where an initial CEP was not submitted. In preparation for this system, County Counsel had added a field in RMIS to record CEP dates and had begun entering the dates.

During this follow-up review, we noted that County Counsel has generally been entering CEP dates in the new RMIS field. However, County Counsel stated they have evaluated RMIS and concluded that RMIS is not currently capable of producing reports for monitoring CEPs. County Counsel indicated they are installing an electronic case calendaring system, Compulaw, that can be used to give electronic notice of CEP submission dates. County Counsel stated they are currently piloting Compulaw in one County Counsel division and plan to expand for department-wide use by July 1, 2009.

Recommendation 3 from the January 29, 2007 Report

County Counsel management enforce the requirement that outside attorneys' fees in excess of prior approved budgets will not be paid.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that outside attorneys did not always prepare amended CEPs/budgets until after they had exceeded the approved budget, and

recommended that County Counsel enforce the requirement that fees in excess of prior approved budgets will not be paid.

During this follow-up review, we noted payments to outside counsel did not exceed approved budgets for the 18 cases we reviewed. We also noted that County Counsel has developed written procedures that require approved amendments to CEPs/budgets to increase RMIS budgets. Since County Counsel can only issue payments to outside counsel if the payment is within the RMIS budget, these procedures should prevent payments to outside counsel in excess of approved budgets.

Recommendation 4 from the January 29, 2007 Report

County Counsel management restate the litigation management procedures requiring attorneys to prepare revised/amended CEPs/budgets for approval to update budgets in RMIS, including documenting the reason(s) for the increase.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel's procedures did not indicate how an attorney should revise a case budget, when the revised budget should be submitted, what the revision should include or who should approve it. We also noted that County Counsel attorneys frequently increased case budgets in RMIS without completing an amended CEP/budget and did not always document the reasons for the increase. County Counsel attorneys stated that they sometimes increased RMIS case budgets just to pay outside attorney invoices.

During this review, we noted that County Counsel had developed procedures for updating RMIS reserves. The new procedures require written justification for budget increases, identify the individual responsible for ensuring there is an approved budget and require supervising attorneys or Third Party Administrators (TPAs) to update fees and costs in RMIS to agree with the approved budget. We noted that County Counsel staff generally followed the new procedures for updating budgeted fees and costs in RMIS. Therefore, we consider this recommendation implemented.

Recommendation 5 from the January 29, 2007 Report

County Counsel management evaluate using RMIS to generate reports identifying cases where actual expenditures are close to a specified percentage of the approved budget (e.g., 80%) to identify cases that may require an amended CEP.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel did not always ensure that an amended CEP was completed before fees and costs exceeded the prior

approved budgets or before increasing the RMIS budget. We recommended that County Counsel evaluate whether RMIS can generate reports for cases where actual expenditures reach a specified percentage of the approved budget (e.g., 80%) to identify cases that may require an amended CEP.

County Counsel indicated this report has been created and expects to start using the report to monitor case budgets by the end of April 2009. In the interim, County Counsel indicated that they worked with the RMIS vendor to develop a new page in RMIS that contains all the fields needed to manage litigation, including a case's budget and actual expenditures. While the page contains information needed to determine whether an updated CEP/budget should be submitted (e.g., case budget, fees and costs paid to date), it is only useful if the supervising attorneys review this specific information for their cases. Accordingly, until the automated exception report is available through RMIS, we consider this recommendation to be substantially implemented.

Recommendation 6 from the January 29, 2007 Report

County Counsel management develop guidelines and provide training for estimating fees and costs.

Current Status: IMPLEMENTED

In our prior report, we noted that, based on substantial variances between initial cost estimates and actual costs, it appeared County Counsel was not properly estimating litigation fees/costs. Various County Counsel supervising attorneys indicated they needed additional training/guidance in developing the estimates.

As part of County Counsel's new LSI, we noted the Litigation Cost Manager developed guidelines attorneys can use to establish or review case budgets. The guidelines include ranges of hours various specific litigation tasks typically require. County Counsel procedures do not require attorneys to use the guidelines, but the guidelines are included in the procedures as an available tool. We also noted that County Counsel's new budget form, which both in-house and outside counsel should use, is more detailed than the form County Counsel used previously. The new form requires attorneys to specify the hours they expect to spend performing specific tasks during each phase of the litigation. This new form should assist attorneys to more accurately estimate fees and costs for each case.

Recommendation 7 from the January 29, 2007 Report

County Counsel management ensure that cost-benefit analyses are completed and documented in CEPs and roundtable discussions.

Current Status: IMPLEMENTED

A cost-benefit (or liability/exposure) analysis is an evaluation of the potential costs of the case, with the objective of determining whether to defend the case or pursue a settlement. The analysis should be performed as soon as possible and reevaluated throughout the case.

In our January 29, 2007 report, we noted that cost-benefit analyses were not always included in CEPs or documented in roundtable notes. During the October 2007 follow-up review, we noted a significant improvement and found that most CEPs and roundtable documentation contained substantially all the cost information. However, we noted County Counsel staff did not always adequately document the cost-benefit information and/or conclusions reached. For example, we noted cases where the conclusion to go to trial was not adequately supported by the information in the CEP or roundtable notes.

During this follow-up, we reviewed cost-benefit analyses documented in ten CEPs and 17 roundtable reports. Although many of the cases we reviewed were still early in the litigation process, we noted that to the extent cost information was available, it appears County Counsel generally included the cost information and a discussion of the appropriate course of action. We consider this recommendation implemented.

Recommendation 8 from the January 29, 2007 Report

County Counsel management consider reducing the \$100,000 threshold for the six-month roundtable requirement to ensure that roundtables are held, even if initial costs are underestimated.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel's March 2006 procedures required six-month roundtables for cases that have the potential for costs and/or liability exceeding \$100,000. However, because fees and costs in initial CEPs were often substantially underestimated, this criterion could result in roundtables not being required for cases where actual costs eventually exceeded \$100,000. Therefore, we recommended that County Counsel consider reducing the dollar threshold for six-month roundtables.

Under the new LSI, roundtables are required every four or six months for higher priority cases, and an initial roundtable is required when fees/costs reach \$20,000 for lower priority cases. Therefore, at least an initial roundtable will be required for all cases for which fees/costs reach or exceed \$20,000, even if fees and costs are initially underestimated. This satisfies the intent of our recommendation.

Recommendation 9 from the January 29, 2007 Report

County Counsel management ensure future contracts with TPAs include requirements to comply with the County's litigation procedures, including roundtables.

Current Status: IMPLEMENTED

In our January 29, 2007 audit report, we noted that six-month roundtables were not required under one of the TPA contracts, even though the roundtables were required in County Counsel's own procedures. Therefore, we recommended that County Counsel ensure future contracts with TPAs include requirements for TPAs to comply with the County's litigation procedures, including roundtables.

We noted that County Counsel has amended the TPA contracts requiring TPAs to comply with all litigation protocols in the LSI, and has provided copies of the procedures to the TPAs.

Recommendation 10 from the January 29, 2007 Report

County Counsel management clarify when roundtables are required (types of cases), and what cases are exempt.

Current Status: IMPLEMENTED

In our prior report, we noted that some roundtables may not have been held because County Counsel procedures did not clearly indicate if roundtables are required for all types of cases. In addition, County Counsel managers indicated they were unsure if the requirements applied to some cases, such as policy-related litigation.

We noted that the new LSI requires County Counsel to assign a priority rating to each case and specifies roundtable requirements for each priority, including the timing of the roundtables and which types of cases do not require roundtables. The LSI also indicates specific criteria cases must meet to be exempt from roundtable requirements. County Counsel has clarified when roundtables are required and which cases are exempt. We consider this recommendation implemented.

Recommendation 11 from the January 29, 2007 Report

County Counsel management clearly reemphasize that required roundtables must be held, and continuously monitor for compliance, using a RMIS exception report or another tracking system.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel did not always hold required roundtables. In our October 5, 2007 follow-up report, we noted that County Counsel held the required six-month roundtables for eight of ten required quarterly roundtables for the ten cases in our sample. However, we noted that County Counsel did not adequately monitor to ensure roundtables were held as required.

Under County Counsel's new procedures, roundtables are required every four or six months for higher priority cases, and an initial roundtable is required when fees/costs reach \$20,000 for lower priority cases. In addition, a roundtable should be held 30 days before a case is scheduled for trial. Quarterly roundtables are no longer required, as discussed under Recommendation 12 in this report.

We reviewed fifteen cases and noted that all roundtables required under the new procedures were held for these cases. County Counsel is still working on developing a system to use Cognos reporting software to generate RMIS exception reports for roundtables not held. However, we reviewed County Counsel's interim manual monitoring method and noted it appears adequate.

Recommendation 12 from the January 29, 2007 Report

County Counsel management evaluate the frequency and dollar threshold for quarterly roundtables.

Current Status: IMPLEMENTED

During our prior review, some County Counsel attorneys indicated they thought there were too many roundtables, which they believed may not have been the most productive use of attorney time. As a result, we recommended County Counsel evaluate the frequency of roundtables, and consider setting dollar thresholds for the quarterly roundtable requirement.

Under the new LSI, the frequency and timing of required roundtables varies depending on the case's significance and potential dollar liability. Higher priority cases require roundtables earlier and more frequently than lower priority cases, and some cases require roundtables when legal fees and costs reach a specified threshold. In addition, unlike the prior procedures, the LSI requires periodic case-specific roundtables throughout the life of higher priority cases. Therefore, it appears County Counsel has evaluated roundtable frequency and dollar thresholds, as recommended.

In addition, although quarterly roundtables are no longer required under the new LSI, it appears the primary purpose of quarterly roundtables to review budgeted and actual fees and costs, as delineated in the March 2006 procedures, has been incorporated into case-specific roundtables. For the 15 cases we reviewed, County Counsel staff

generally indicated on roundtable reports that budgeted and actual fees and costs were discussed at the case-specific roundtables.

Recommendation 14 from the January 29, 2007 Report

County Counsel management develop detailed written roundtable procedures/guidelines, including the topics to be covered at each type of roundtable, expected attendees and procedures to follow at the roundtable.

Current Status: IMPLEMENTED

In our initial review, we noted that County Counsel did not have detailed roundtable procedures and guidelines, such as topics to be covered at each type of roundtable (e.g., quarterly roundtables, etc.), who should attend and procedures, such as how to manage roundtable discussions. Various County Counsel managers told us there was a need for more detailed procedures to improve the consistency and productivity of roundtable discussions.

During this review, we noted that the LSI specifies who should attend each type of roundtable and contains a roundtable report form that includes minimum topics attorneys should cover at roundtables. The LSI does not contain written procedures to follow at roundtables or guidelines on how to manage roundtable discussions. However, we interviewed three supervising attorneys and it appears that they understand the objectives of roundtable discussions. In addition, at the training County Counsel provided on the new LSI, the instructor provided guidelines for managing roundtable discussions. For example, the instructor stated that the managing attorney should be inquisitive, know the strengths and weaknesses of the case, be prepared to give the Board a complete briefing upon conclusion of the roundtable, and be satisfied that the case should be settled or go to trial, or if more information is needed to make that decision.

Based on the above, we consider this recommendation implemented. However, County Counsel should consider incorporating the above guidelines that were presented in the LSI training into their written procedures.

Recommendation 15 from the January 29, 2007 Report

County Counsel management provide training on managing roundtable discussions.

Current Status: IMPLEMENTED

In our initial review, we noted that County Counsel did not have formal training for conducting roundtables, only mentoring and on-the-job training. County Counsel

indicated that they have since provided training on conducting roundtables as part of the LSI training. County Counsel also recorded the LSI training on DVD for attorneys to view.

We reviewed the LSI training DVD and noted that it provides suggestions for conducting roundtable discussions. For example, the training DVD indicated that attorneys should be inquisitive, and that a case should be discussed in sufficient detail to satisfy the attorney whether the case should go to trial, be settled or requires more information. We also noted that 20 of 21 attorneys and all Division Chiefs who supervised the cases we reviewed appear to have attended the training. Therefore, it appears most attorneys received some training on managing roundtable discussions.

All three supervising attorneys we interviewed indicated that they have experience and feel confident conducting roundtables. However, they did not receive formal training on how to manage roundtable discussions other than the LSI training. We suggest that County Counsel provide training specifically on managing roundtable discussions, such as role playing or a video-recording of a good roundtable.

Recommendation 16 from the January 29, 2007 Report

County Counsel management evaluate and implement procedures to ensure that affected departments are provided adequate status reports on their cases for both in-house and outside counsel.

Current Status: PARTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that 40 of 119 (34%) required status reports were not submitted. To ensure information regarding case developments is consistently communicated and adequately documented, we recommended that County Counsel evaluate and implement procedures to ensure that affected departments receive adequate status reports.

Under the new LSI, Trial Counsel Reports (TCRs) have replaced status reports as the formal updates to affected County departments regarding case status. TCRs are due at least ten days before roundtables, to give departments time to prepare for roundtable discussions. However, during this follow-up review, for the 15 cases we reviewed, attorneys did not always submit TCRs, or submitted them late. Three (20%) of 15 required TCRs were not submitted, and four were submitted on or after the roundtable date; two were dated the day of the roundtable, and two were dated several days after the roundtable. Late TCRs may not give roundtable attendees sufficient time to review the TCRs to prepare for roundtable discussions. We also noted that County Counsel's procedures do not specify if affected departments should receive copies of the TCRs. If departmental representatives attend roundtables, they should at least receive a copy of

the TCR at the roundtable, if not before. However, it is unclear if departments received TCRs for the two roundtables in our sample that the departments did not attend.

County Counsel indicated that they keep departments informed through a variety of means, including phone calls, emails, etc. However, we consider the recommendation to be partially implemented because we believe departments should receive formal status reports on cases as required by County Counsel's procedures.

Recommendation 17 from the January 29, 2007 Report

County Counsel management establish a tracking system to ensure that status reports are submitted as required, and monitor for compliance through exception reports.

Current Status: PARTIALLY IMPLEMENTED

In our January 29, 2007 report, we noted that attorneys did not always complete required status reports, and recommended that County Counsel start tracking and monitoring status reports to ensure they are submitted as required.

As discussed under Recommendation 16, TCRs have replaced status reports. TCRs are due ten days before roundtables and should provide updated case status to affected departments in preparation for roundtable discussions. Based on our interviews with County Counsel, supervising attorneys were initially responsible for ensuring that TCRs were submitted timely. However, County Counsel later determined it would be more effective for the General Litigation Division to monitor TCRs. Some of the TCRs in our sample were due before General Litigation took over this responsibility.

General Litigation Division currently keeps a manual log of outstanding TCRs and follows up with supervising attorneys to obtain the TCRs. However, we noted County Counsel's log did not indicate any follow up on late and missing TCRs until after the roundtables had been held. For example, General Litigation did not follow up on two missing TCRs until four months after the roundtable. County Counsel should follow up on missing TCRs prior to roundtables to ensure roundtable attendees receive TCRs before the roundtables and have time to prepare for roundtable discussions. Per our interviews, General Litigation had only recently taken over the monitoring responsibility from supervising attorneys at the time of our review.

County Counsel indicated that they improved the tracking of TCRs in August 2008, which was after the period for which we reviewed TCRs. Counsel also indicated that they will begin using Compulaw to track TCRs in July 2009. While County Counsel has indicated that they have taken action to improve the tracking of TCRs, based on our review, we consider the recommendation to be partially implemented.

Recommendation 18 from the January 29, 2007 Report

County Counsel management evaluate using RMIS to monitor the completion of required status reports, and to generate exception reports for missing status reports.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our initial review, we noted that County Counsel did not always complete required status reports. We recommended that County Counsel evaluate whether RMIS could be used to monitor and generate exception reports for missing status reports, which are now known as TCRs, as discussed above.

County Counsel stated they monitor TCRs through the roundtable process. However, as noted under Recommendation 16, attorneys did not submit all TCRs as required for the cases in our sample. According to County Counsel IT staff, RMIS is not currently able to identify outstanding TCRs. County Counsel staff indicated the Department is planning to track TCR due dates using Compulaw, a litigation calendaring system. County Counsel also indicated they are currently piloting Compulaw in one division, and expect to fully implement the system department-wide by July 1, 2009. Therefore, it appears that County Counsel is in the process of implementing this recommendation.

Recommendation 19 from the January 29, 2007 Report

County Counsel management make improving compliance with litigation cost management procedures (e.g., CEPs, roundtables, etc.) a performance measurement goal for all County Counsel managers, including Division Chiefs, Senior Assistant County Counsels, and the Department Head.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted a number of issues related to compliance with litigation cost management procedures, and areas where County Counsel management needed to take action to improve compliance, revise procedures and provide training. Because these areas are important to controlling litigation costs, we recommended these areas be a performance goal for County Counsel managers.

During this review, we noted performance goals relating to compliance with litigation cost management procedures were assigned to Division Chiefs overseeing divisions that handle litigation and one of three current Senior Assistant County Counsels. In addition, performance goals relating to developing and implementing the new litigation procedures were given to the Department Head and one prior Senior Assistant County Counsel. Therefore, we consider this recommendation implemented.

Recommendation 20 from the January 29, 2007 Report

County Counsel management establish standards and procedures for reviewing outside counsel billings.

Current Status: IMPLEMENTED

During our original review, we noted County Counsel supervising attorneys should review outside counsel invoices for contracted cases they supervise to ensure the charges are reasonable for the case and the work performed. However, County Counsel did not have procedures and standards for attorneys to review the reasonableness of outside attorneys' charges, and attorneys just relied on their professional judgment. Various individuals at County Counsel indicated a need for bill review standards and guidelines.

As part of the new LSI, the Litigation Cost Manager developed guidelines that attorneys can use when reviewing the reasonableness of hours charged on outside counsel invoices. The guidelines include ranges of hours for various specific tasks. County Counsel attorneys would still use their professional judgment to determine whether the actual charges are reasonable for each case. The LSI guidelines meet the intent of our recommendation.

Recommendation 21 from the January 29, 2007 Report and Recommendation 6 from the November 27, 2006 Outside Attorney Report

Recommendation 21 from the January 29, 2007 Report

County Counsel management ensure supervising attorneys review the reasonableness of outside counsel billings. This should include revising bill review procedures for TPA cases to require the supervising attorney to review outside counsel invoices.

Recommendation 6 from the November 27, 2006 Outside Attorney Report

Supervising County Counsel attorneys should review all outside counsel invoices for whether the time entries are reasonable, necessary and proper, irrespective of whether a TPA is also reviewing those invoices.

Current Status: PARTIALLY IMPLEMENTED

In the above-referenced reports, we and the outside attorney noted that County Counsel attorneys supervising cases that are contracted through a TPA did not review outside attorney invoices. Although TPA contracts require the TPAs to review the invoices for mathematical accuracy and appropriate billing rates, supervising attorneys who are

familiar with the day-to-day facts of the case should also review the outside counsel invoices for reasonableness. Only attorneys responsible for overseeing a case, who are familiar with the work performed, can judge whether outside counsel time charges are reasonable. In addition, outside counsel has an incentive to be more careful about their billings if they know that in-house attorneys are reviewing their invoices, as opposed to non-attorneys.

Based on our current interviews, it appears that supervising attorneys review bills for cases contracted directly with outside counsel, but do not review bills for cases contracted through a TPA. County Counsel management stated that it was not feasible for attorneys to review invoices for TPA cases due to the time required. However, we believe it is important for attorneys familiar with the case to review the invoices, for the reasons noted above. County Counsel is working on implementing an electronic invoice review system, and expects to have a contract in place in August 2009. Once electronic invoice review is fully implemented, County Counsel believes they would be better able to review invoices for cases contracted through a TPA. In the interim, County Counsel has provided invoice review guidelines to the TPAs, and has indicated that they plan to start reviewing all invoices for cases designated as the highest priority under County Counsel's new procedures after the TPAs perform their review. County Counsel may also want to consider requiring attorneys supervising TPA cases to review time charges that fall outside hourly ranges provided in the guidelines.

Recommendation 22 from the January 29, 2007 Report

County Counsel management consider establishing a separate unit to oversee the bill review process.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we recommended that County Counsel consider establishing a separate unit to oversee the bill review process. For example, the central unit could review invoices for mathematical accuracy and compliance with billing guidelines. This unit could then send the bill to the supervising attorney to review the bill for reasonableness.

County Counsel management stated they considered establishing a separate unit to oversee the bill review process, but concluded it was not feasible. They indicated establishing a new unit could not be accomplished by reassigning existing staff. In addition, we noted that electronic bill review software, which County Counsel plans to implement in approximately six months, will accomplish many of the functions of a separate bill review unit. Therefore, we consider this recommendation implemented.

Recommendation 24 from the January 29, 2007 Report

County Counsel management revise existing litigation cost management procedures to clarify the in-house supervising attorney's role and how the procedures apply to TPAs.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted County Counsel staff had not been consistently following the Department's litigation cost management procedures, and noted some areas where County Counsel could improve their procedures. For example, we noted that County Counsel's March 2006 procedures did not specify the supervising attorney's role for cases that are contracted out and how the litigation cost management procedures applied to TPAs.

During this review, we noted County Counsel has significantly improved compliance with litigation cost management procedures for the cases we reviewed. For example, the required roundtables were held, and CEPs were generally submitted as required. In addition, the CEO executed contract amendments with the TPAs, requiring TPAs to follow County Counsel's new procedures. We also noted that County Counsel's new procedures specify some supervising attorney responsibilities. For example, the procedures specify supervising attorneys are responsible for approving case budgets and ensuring information in RMIS is accurate and promptly updated. Therefore, we consider this recommendation implemented.

Recommendation 25 from the January 29, 2007 Report

County Counsel management require attorneys to complete the Case Evaluation and Plan Analysis or an alternative document to perform a post-resolution assessment of cases that exceed a specified dollar amount.

Current Status: PARTIALLY IMPLEMENTED

In April 2003, the Board instructed County Counsel and the CEO to develop a litigation evaluation and assessment tool (tool) for judgments reported to the Board and settlements submitted for Board approval. The Board stated that the tool should compare the original litigation plan and assessment of legal exposure with the final outcome, explain any differences, and include lessons learned that could be used to reduce future costs. In September 2003, County Counsel and the CEO submitted a draft Case Evaluation and Plan Analysis tool to the Board. County Counsel and the CEO indicated that the tool was to be completed for cases with costs of \$200,000 or more.

In our January 29, 2007 report, we noted that County Counsel's 2006 procedures did not require attorneys to prepare the prior tool and County Counsel staff were not completing the tool. Therefore, we recommended that County Counsel require attorneys to use the tool or develop another document to do post-resolution assessments for cases over a specified dollar amount.

County Counsel indicated that they are currently developing an alternative evaluation and assessment tool that reflects the numerous changes and improvements that have been made in litigation management since 2003. Pending submission of County Counsel's alternative evaluation and assessment tool to the Board and implementation of the tool, we consider this recommendation to be partially implemented.

Recommendation 26 from the January 29, 2007 Report

County Counsel management develop a RMIS user manual and ensure staff have adequate training on using the system, with periodic re-training based on error/omission analysis.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel needed to ensure staff had adequate training on the use of RMIS, and that County Counsel did not have a RMIS user's manual. Lack of proper instruction may have contributed to the limited use of RMIS that we noted in our prior review.

During this review, we noted that County Counsel has developed a RMIS user manual and has provided RMIS training to staff. We reviewed RMIS training sign-in sheets and noted that 20 of 21 County Counsel attorneys and managers who handled or supervised the 25 cases in our samples attended RMIS training.

County Counsel does not conduct an error/omission analysis to identify areas or staff that may require additional training. However, County Counsel does offer re-training. Two of the 20 attorneys noted above attended the training more than once, and, based on our interviews, County Counsel provides individual training if requested. The three supervising attorneys we interviewed during our review said they had adequate instruction on how to use RMIS. In addition, we noted that staff has been more consistently updating RMIS. Therefore, we consider this recommendation implemented.

Recommendation 27 from the January 29, 2007 Report

County Counsel management ensure that attorneys enter and update case information in RMIS, including case notes and settlement/trial dates; expand the

monthly email reminder to cases contracted out; and monitor compliance through RMIS exception reports.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel staff were not consistently updating case information in RMIS. We also noted that County Counsel had implemented a system to identify in-house cases that had not been updated in RMIS in the past 30 days and to send attorneys email reminders to update the cases. We recommended that County Counsel expand these reminders to cases contracted directly with outside law firms, and monitor for compliance through RMIS exception reports.

During this review, we noted that County Counsel staff updated case information in RMIS (e.g., trial, roundtable and CEP dates) more consistently for the 25 cases we reviewed. County Counsel no longer sends attorneys email reminders to update information in RMIS, and does not monitor compliance through RMIS exception reports. However, RMIS has been revised to show all mandatory fields on one screen, so attorneys can easily update case information. We also noted that County Counsel's new procedures clarify who is responsible for updating RMIS (i.e., the County Counsel attorney who handles a lawsuit or oversees outside counsel handling a lawsuit). Since County Counsel has clarified responsibilities and has been more consistently updating RMIS, we consider this recommendation implemented.

Recommendation 32 from the January 29, 2007 Report

County Counsel management immediately review all RMIS user access profiles to ensure access is restricted to each user's duties, and review all user access at least annually, whenever employee duties change, or when an employee leaves the Department.

Current Status: IMPLEMENTED

In our report dated January 29, 2007, we noted that County Counsel management did not periodically review RMIS user access profiles, and recommended that management immediately review all user profiles, and review all user access at least annually, whenever employee duties change or when an employee leaves the Department. In our October 5, 2007 follow-up report, we noted County Counsel had developed procedures to review RMIS user access profiles on an on-going basis, and that County Counsel had reviewed user access profiles of the Department's legal staff and adjusted access as they believed necessary. However, County Counsel's review may not have addressed all of the access issues. Specifically, County Counsel indicated they were unaware that our recommendation related to all users, including users with financial access.

During this review, we noted that County Counsel recently reviewed RMIS user access profiles, including access for financial staff, and made changes they believed appropriate. We selected a sample of four County Counsel divisions, one of which included financial staff. County Counsel's documentation indicates they reviewed the appropriateness of user access profiles for employees in all four divisions. As discussed under Recommendation 3 from our October 5, 2007 report, we reviewed current RMIS access for financial staff and did not note any access that appeared inappropriate.

Recommendation 33 from the January 29, 2007 Report

County Counsel management develop standards for staff to account for time spent on cases, and require supervisors to review time cards and/or appropriate RMIS reports to ensure supervising attorneys are charging their time to their cases.

Current Status: SUBSTANTIALLY IMPLEMENTED

In our prior review, we noted that some supervising attorneys did not appear to be charging time to the cases they supervise. For example, the supervising attorneys did not charge any time to two of 12 cases in our sample that were contracted directly with outside counsel. Accurately charging attorney time is essential to identify the full cost of a case. Therefore, we recommended that County Counsel develop standards for staff to account for time spent on cases, and require supervisors to review time cards and/or appropriate RMIS reports to ensure supervising attorneys are charging their time to their cases.

During this follow-up review, we noted that County Counsel has developed new procedures for attorneys who oversee cases that are contracted directly with outside counsel. The procedures require attorneys to charge time directly to a case if they spend more than one-half hour on the case. If attorneys spend less than one-half hour on a case, they should charge the time to a RMIS number for litigation oversight for the department involved in the case. We verified that hours charged to these RMIS numbers are reported as in-house fees in the quarterly litigation reports. However, based on our testwork, it appears that attorneys do not always charge time to cases they supervise or to the appropriate RMIS numbers for litigation oversight.

For three of five cases we reviewed that were contracted directly with outside counsel, the supervising attorneys did not charge any time to the cases they supervised. In addition, we reviewed time charged on days the supervising attorneys for these five cases attended a roundtable, and noted that for six of seven roundtables held for the five cases, supervising attorneys did not charge any time either to the case or to the applicable RMIS number for litigation oversight on the day they attended the roundtable. It appears some of these attorneys charged time to a non-litigation RMIS number on the

day they attended a roundtable. County Counsel management stated that Division Chiefs are responsible for signing attorney time cards. However, County Counsel's procedures do not require Division Chiefs or other management to review time cards or RMIS reports to ensure attorneys are appropriately charging time to the cases they supervise. County Counsel management indicated that they are continuing to reinforce the need for all in-house supervising attorneys to report all time as directed.

Recommendation 34 from the January 29, 2007 Report

County Counsel management include in-house costs for supervising TPA cases in the in-house fees reported in the Quarterly Litigation Reports.

Current Status: IMPLEMENTED

In our prior reviews, we noted in-house attorneys charged time spent overseeing TPA cases to one of two RMIS numbers for TPA oversight. However, time charged to these numbers was not included in in-house fees in the Quarterly Litigation Reports. This understated in-house litigation fees.

During this follow-up review, we reviewed the Quarterly Litigation Reports for the 3rd quarter of FY 2007-08 and noted that in-house fees charged to the two RMIS numbers for TPA oversight were included in the reports. In addition, for the six TPA cases we reviewed, we noted that supervising attorneys charged time to one of the two TPA oversight numbers on the day they attended a roundtable for eight of nine roundtables held for the six cases. Therefore, it appears that, overall, in-house attorneys overseeing TPA cases appropriately charge time to the oversight code.

Recommendation 1 from the October 5, 2007 Report

County Counsel management revise the March 2006 procedures to require supervisors to document approval of CEPs for in-house cases.

Current Status: IMPLEMENTED

In our October 5, 2007 report, we noted that County Counsel's March 2006 procedures did not require supervisors to sign/initial CEPs for in-house cases to indicate approval, and the CEPs for the two in-house cases we reviewed were not signed or initialed.

County Counsel's new procedures do not specifically state that supervisors should sign or initial CEPs/budgets for in-house cases. However, the new CEP and budget forms, which should be used for cases handled in-house as well as for those contracted out, include a signature and date block for supervising attorneys to indicate approval, and the supervisors signed/initialed the CEPs/budgets for the two in-house cases we reviewed.

Recommendation 2 from the October 5, 2007 Report

County Counsel management revise their procedures to require attorneys to prepare/update a cost-benefit analysis for each case and review these analyses at the quarterly roundtables or similar forums.

Current Status: IMPLEMENTED

During our October 5, 2007 review, we noted that Counsel Counsel's procedures required cost-benefit analyses in the initial CEPs and at six-month roundtables, but not at quarterly roundtables. However, we noted initial CEPs and six-month roundtables took place early in the case when there may not have been enough information to prepare a cost-benefit analysis, and six-month roundtables were only required for cases that were initially budgeted for \$100,000 or more. Therefore, it appeared there was a potential for overlooking cost-benefit analyses, since there was no requirement to conduct a cost-benefit analysis at quarterly roundtables.

Under County Counsel's new procedures, quarterly roundtables are no longer required. Instead, higher priority cases require a roundtable within the first four to six months of case assignment and then periodically throughout the life of the case. Lower priority cases require an initial roundtable when fees and costs reach \$20,000. The new procedures require cost-benefit analyses to be conducted at all roundtables, so cost-benefit analyses should be conducted periodically for most cases, and at least once for lower priority cases. Therefore, County Counsel's new procedures address the concerns in our recommendation.

Recommendation 3 from the October 5, 2007 Report

County Counsel management review RMIS access profiles of financial personnel, ensure that adequate separation of duties is maintained, and consider limiting the number of personnel who are able to increase case budgets above a specific amount.

Current Status: IMPLEMENTED

In our January 29, 2007 report, we noted that County Counsel management did not periodically review RMIS user access profiles. In our October 5, 2007 follow-up report, we noted County Counsel had developed procedures to review RMIS user access profiles on an on-going basis, and that County Counsel had reviewed user access profiles of the Department's legal staff and adjusted access as they believed necessary. However, County Counsel's review did not include financial staff because they were unaware that our recommendation related to all users.

During this review, we noted County Counsel reviewed RMIS user access profiles of financial staff to ensure adequate separation of duties exists. Based on our review, we did not note any access for financial staff that appeared inappropriate. In addition, although County Counsel only slightly reduced the number of users who can significantly increase RMIS budgets, we noted County Counsel has better controls over the payment process, which reduces the risk of inappropriate payments. For example, financial staff can no longer change RMIS budgets, and County Counsel developed procedures requiring an approved CEP/budget prior to changing the budget in RMIS.

Recommendation 4 from the October 5, 2007 Report

County Counsel management require written requests to add or update RMIS user profiles and track any changes.

Current Status: IMPLEMENTED

During our first follow-up review, we noted changes to some County Counsel employees' user access that County Counsel's RMIS administrator could not explain. We recommended that County Counsel formalize the user access update process by requiring written requests and tracking any changes to ensure no unauthorized changes are made.

County Counsel has developed a new RMIS user access policy that requires management approval to add or update RMIS user profiles. We reviewed ten recent updates to County Counsel employees' user access and noted County Counsel was able to provide documentation indicating approval for the updates. Therefore, we consider this recommendation implemented.

Recommendation 1 from the November 27, 2006 Outside Attorney Report

Continue and expand litigation roundtables.

Current Status: IMPLEMENTED

The outside attorney noted that the litigation roundtable process is very valuable and should be continued, and recommended that the frequency of roundtables should increase as the County's monetary exposure increases. Per the outside attorney, there should be at least three roundtables on any case where the potential exposure against the County at trial is estimated to exceed \$500,000; in the first six months of the case, six months before trial and two months before trial.

We noted that the LSI requires roundtables to be held for most cases. The frequency of the required roundtables varies according to the potential exposure; cases with larger monetary exposure require more frequent roundtables, which is in accordance with the

outside attorney's recommendation. We also noted that under the LSI, it appears that cases with potential exposure at trial exceeding \$500,000 would typically require at least three roundtables (i.e., four or six months after case assignment; four or six months after that and 30 days before trial). We tested compliance with the LSI roundtable requirements (see Recommendation 11) and noted County Counsel generally holds required roundtables. Therefore, it appears the intent of the outside attorney's recommendation has been met.

Recommendation 2 from the November 27, 2006 Outside Attorney Report

Engage in "Trial-Disaster" contingency planning at the roundtables.

Current Status: SUBSTANTIALLY IMPLEMENTED

The outside attorney indicated that County Counsel attorneys should develop trial contingency plans at roundtables, and document the plans in the roundtable minutes. Contingency planning involves assuming the worst may happen at trial and having backup plans ready for defense counsel to fall back on. Roundtable attendees should discuss "what if" scenarios and develop backup plans in case evidence, such as key witnesses or records, become unavailable at trial.

During this review, County Counsel stated they added a field to the new roundtable report form to prompt attorneys to discuss and document trial disaster contingency planning at roundtables. However, for eight of the 17 roundtables we reviewed, attorneys used the old roundtable report forms that did not contain the new field. In addition, the disaster planning field was left blank on two of the nine roundtable reports prepared using the new form. Therefore, for these ten roundtables it appears there was no documentation that attorneys discussed trial contingency plans at the roundtable. We noted that four of these ten roundtables were pre-trial roundtables, at which it appears critical for attorneys to discuss trial contingency plans. County Counsel should ensure that the attorneys use the new roundtable report form and document trial disaster contingency planning at roundtables.

County Counsel management indicated that meaningful trial disaster planning can only occur when there is some reason to anticipate a disaster and that to attempt to plan for every conceivable contingency would require an unwarranted expenditure of time and resources. However, we noted that the outside attorney states the primary purpose of roundtables is to detect potential danger, including the possibility that key witnesses or evidence may be unexpectedly unavailable at trial. At the very least, attorneys should discuss whether contingency plans are needed and document the discussion in the roundtable notes.

Recommendation 3 from the November 27, 2006 Outside Attorney Report

Include more participants with actual trial experience at roundtables.

Current Status: IMPLEMENTED

The outside attorney indicated that participants with actual trial experience should attend roundtables and should be willing to speak up candidly about the case, without fear of recrimination. According to the outside attorney, County Counsel attorneys and outside counsel should call upon their past trial experience to recognize weaknesses and potential dangers at trial due to “bad” facts, witnesses and/or evidence.

We interviewed three County Counsel attorneys who supervised five of the 15 cases in our sample and inquired about their trial experience and the experience of the five outside attorneys who attended roundtables for the cases. According to our interviews, the three supervising attorneys and five outside attorneys all have trial experience.

We also asked the three supervising attorneys if roundtable attendees typically feel comfortable expressing their opinions if they disagree with others’ viewpoints. The supervising attorneys indicated that, in general, they believe roundtable attendees are comfortable expressing their opinions, and sometimes attendees disagree at the roundtables. Therefore, based on our interviews, it appears County Counsel has implemented the outside attorney’s recommendation.

Recommendation 4 from the November 27, 2006 Outside Attorney Report

County Counsel attorneys can adopt new tools to properly evaluate outside counsel litigation budgets.

Current Status: IMPLEMENTED

The outside attorney noted that tools such as a rough “price list,” indicating price or time ranges for typical litigation tasks, could assist County Counsel supervising attorneys in evaluating outside counsel litigation budgets. For example, the “price list” might indicate a specific litigation task typically takes 10 to 15 hours. If the outside attorney’s budget indicates performance of ten of these specific tasks, the County Counsel supervising attorney would expect the outside attorney’s budget to include 100 to 150 hours for these tasks.

As noted under Recommendation 20, the Litigation Cost Manager developed Budget & Invoice Time Guidelines that include ranges of hours that various specific litigation tasks typically require. County Counsel attorneys still use their professional judgment to determine where in the range hours charged for specific cases should fall, or if it is

appropriate for charges to fall outside the specified range. Supervising attorneys could use the guidelines for reviewing budgets as well as for reviewing invoices.

County Counsel also developed a new budget form that requires outside counsel to identify hours spent on specific litigation tasks. This form is more detailed than the prior budget form, which only required outside counsel to list fees for various stages of a case, but not for specific tasks. It appears that this new budget form and the guidelines indicating ranges of hours for specific litigation tasks provide supervising attorneys additional tools to evaluate outside counsel litigation budgets, as recommended.

Recommendation 5 from the November 27, 2006 Outside Attorney Report

Litigation budgets should be required on a quarterly basis, irrespective of when CEPs are due.

Current Status: IMPLEMENTED

Under County Counsel's prior procedures, case budgets were submitted together with CEPs, which focus on case strategy and objectives. Attorneys were required to estimate the total pre-trial fees and costs, and to submit revised budgets as needed. The outside attorney who reviewed County Counsel's procedures stated that, while case strategy, tactics, and objectives are suited for long-range planning, he believed budgets should be for shorter lengths of time, such as quarterly. He stated that requiring litigation budgets from outside counsel each quarter would impose more discipline on the budget process.

Under the new LSI, attorneys submit CEPs and budgets as separate documents, so the timing of case budgets may differ from the CEPs, as the outside attorney recommended. However, instead of requiring outside counsel to submit quarterly budgets, County Counsel determined that it is appropriate to require budgets that cover the life of a case, broken down by each phase of litigation. In addition, the LSI requires budgets to be reviewed at every roundtable, and updated semi-annually on all cases where indemnity reserves exceed \$100,000. Although we cannot conclude whether the decision to require budgets that cover the life of a case and semi-annual updates, as opposed to quarterly budgets, would satisfy the outside attorney's recommendation, County Counsel's approach appears reasonable.

Recommendation 7 from the November 27, 2006 Outside Attorney Report

The County Counsel's office may want to adopt outside counsel billing guidelines that more closely resemble those used by corporate law departments.

Current Status: IMPLEMENTED

The outside attorney noted that corporate/institutional clients give billing guidelines to outside law firms describing how the client wants to be billed and what the client will and won't pay for. The outside attorney noted that the typical billing guidelines he had seen were more detailed and covered more billing requirements than County Counsel's billing guidelines, and recommended that County Counsel consider switching to a more detailed set of billing guidelines.

During this review, we noted that County Counsel has developed new billing guidelines that County Counsel is starting to use when they renew contracts with outside law firms. The revised billing guidelines are more detailed than the prior guidelines. For example, the new guidelines provide more details regarding how legal services should be described in invoices, and what travel expenses are/are not reimbursable. Although we are unable to judge whether these billing guidelines resemble those used by corporate law departments, the billing guidelines are more detailed, as the outside attorney recommended. Therefore, we consider this recommendation implemented.

Recommendation 8 from the November 27, 2006 Outside Attorney Report

The County's outside counsel billing guidelines should be modified with respect to certain cost charges.

Current Status: IMPLEMENTED

The outside attorney found that amounts law firms charged the County for photocopying and faxing were too high, and recommended that County Counsel modify the billing guidelines to reduce payment for in-house photocopying to ten cents per page and only pay actual telephone charges for outgoing faxes.

We noted that County Counsel's new Legal Services Agreement (LSA) and Billing Requirements no longer provide for reimbursement for internal photocopying and faxes. We also noted that the new agreement states that the County expects all monthly photocopying projects not exceeding 500 pages to be performed internally. The revised billing rates in the LSA and Billing Requirements satisfy the outside attorney's recommendation. County Counsel stated they have implemented the new agreement with a majority of their outside law firms, including the firms handling general liability, sheriff, medical malpractice, employment and dangerous condition cases, and will implement the new agreement with the remaining firms as the contracts are otherwise amended.

Acknowledgment

We discussed our report with County Counsel management on March 9, 2009. County Counsel believes they have fully implemented some of the recommendations we have reported as either substantially or partially implemented. However, as previously

indicated, we agree that County Counsel has made significant progress in implementing the recommendations. County Counsel has indicated that they are committed to continuing their efforts to fully implement the remaining recommendations. County Counsel will provide a status report to your Board on all recommendations not previously reported as implemented in September 2009. We will conduct a follow-up review on these recommendations after County Counsel issues their status report.

We thank County Counsel management and staff for their cooperation and assistance during this review. Please call me if you have any questions, or your staff may contact Terri Kasman at (213) 253-0103.

WLW:MMO:JLS:TK:NN

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